

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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BILL DRAFT 2019-RBxfz-13 [v.14]

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
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Short Title: RL Tech., Clarifying, and Admin Chgs - Part 2.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO
3 THE REVENUE LAWS.

4 The General Assembly of North Carolina enacts:

5
6 **PART I. EXCISE TAX CHANGES**

7 ...

8 **SECTION 1.10.(a)** G.S. 105-449.47(a1) reads as rewritten:

9 "(a1) License and Decal. – When the Secretary licenses a motor carrier, the Secretary must
10 issue a license for the motor carrier and a set of decals for each qualified motor vehicle. A motor
11 carrier must keep records of decals issued to it and must be able to account for all decals it
12 receives from the Secretary. Licenses and decals issued by the Secretary are for a calendar year.
13 All decals issued by the Secretary remain the property of the State. The Secretary may revoke a
14 license or a decal when a motor carrier fails to comply with this Article or Article 36C or 36D of
15 this Subchapter.

16 A motor carrier must carry a copy of its license in each motor vehicle operated by the motor
17 carrier when the vehicle is in this State. A–Unless operating under a temporary permit under
18 G.S. 105-449.49, a motor vehicle must clearly display one decal on each side of the vehicle at all
19 times. A decal must be affixed to the qualified motor vehicle for which it was issued in the place
20 and manner designated by the authority that issued it."

21 **SECTION 1.10.(b)** G.S. 105-449.49 reads as rewritten:

22 **"§ 105-449.49. Temporary permits.**

23 (a) Issuance–Permitting Service. – Upon application to the Secretary and payment of a
24 fee of fifty dollars (\$50.00), a permitting service may obtain a temporary permit authorizing a
25 motor carrier to operate a vehicle in the State for three days without licensing the vehicle in
26 accordance with G.S. 105-449.47. The permitting service may sell the temporary permit to a
27 motor carrier. A motor carrier to whom a temporary permit has been issued may elect not to
28 report its operation of the vehicle during the three-day period. Fees collected under this
29 subsection are credited to the Highway Fund.

30 ...

31 (c) Licensed Motor Carrier. – A licensed motor carrier in North Carolina, who is subject
32 to the International Fuel Tax Agreement, may apply for a temporary permit authorizing the motor
33 carrier to operate a qualified motor vehicle in the State for thirty days without a decal. The



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licensed motor carrier must be in compliance with this Article, and the application must be on a form prescribed by the Secretary and contain information required by the Secretary.

(d) Permit. – A motor carrier operating under a temporary permit issued pursuant to this section must keep a copy of the permit in the motor vehicle."

SECTION 1.11. G.S. 105-449.69A reads as rewritten:

"§ 105-449.69A. Temporary license during disaster response period.

(a) Temporary License. – The Secretary may grant a temporary license to an applicant to import, export, distribute, or transport motor fuel in this State in response to a state of emergency or a disaster declaration. The term terms "state of emergency" and "disaster declaration" has have the same meaning as defined in G.S. 166A-19.3. ~~The temporary license expires upon the expiration of the disaster declaration.~~ A temporary license is effective on the date the applicant engages in business in this State and expires 30 days after that date. Prior to the expiration of the temporary license, the licensee may request, on a form prescribed by the Secretary, that the license be extended for an additional 30 days, if the state of emergency or disaster declaration remains in effect. A temporary license issued under this section may not be renewed or a new temporary license granted if the licensee failed to file the required returns or make payments of the required taxes. comply with this Article.

(b) Requirements. – To obtain a temporary license, a person must file an application with the Secretary on a form prescribed by the Secretary within seven calendar days ~~from the date of the disaster declaration.~~ of engaging in business in this State. ~~An~~ The application must be filed when a state of emergency or a disaster declaration is in effect and must include all of the following information:

- (1) The legal name of the business and the trade name, if applicable, under which the person will transact business within the State.
- (2) The federal identification number of the business or, if such number is unavailable, the Social Security number of the owner.
- (3) The location, with a street number address, of the principal office or place of business and the location where records will be made available for inspection.
- (4) Any other information required by the Secretary.

...."

PART II. SALES AND USE TAX CHANGES

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SECTION 2.1.(a) G.S. 105-164.14 reads as rewritten:

"§ 105-164.14. Certain refunds authorized.

...

(b) Nonprofit Entities and Hospital Drugs. – A nonprofit entity is allowed a semiannual refund of sales and use taxes paid by it under this Article on direct purchases of ~~tangible personal property and services items~~ for use in carrying on the work of the nonprofit entity. Sales and use tax liability indirectly incurred by a nonprofit entity through reimbursement to an authorized person of the entity for the purchase of tangible personal property and services for use in carrying on the work of the nonprofit entity is considered a direct purchase by the entity. Sales and use tax liability indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the nonprofit entity and is being erected, altered, or repaired for use by the nonprofit entity for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct purchases by the nonprofit entity. The refund allowed under this subsection does not apply to purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the

second six months of a calendar year is due the following April 15. The aggregate annual refund amount allowed an entity under this subsection for the State's fiscal year may not exceed thirty-one million seven hundred thousand dollars (\$31,700,000).

The refunds allowed under this subsection do not apply to an entity that is owned and controlled by the United States or to an entity that is owned or controlled by the State and is not listed in this subsection. A hospital that is not listed in this subsection is allowed a semiannual refund of sales and use taxes paid by it on over-the-counter drugs purchased for use in carrying out its work. The following nonprofit entities are allowed a refund under this subsection:

...

(c) Certain Governmental Entities. – A governmental entity listed in this subsection is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of ~~tangible personal property and services items~~. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. The refund allowed under this subsection does not apply to purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:

...."

SECTION 2.1.(b) This section becomes effective July 1, 2020, and applies to purchases made on or after that date.

...

SECTION 2.3.(a) G.S. 106-164.4J reads as rewritten:

"§ 105-164.4J. Marketplace-facilitated sales.

(a) Scope. – This section applies to a marketplace facilitator engaged in business in this State that makes sales, including all marketplace facilitated sales for all marketplace sellers, sourced to this State for the previous or the current calendar year that meet either of the following:

(1) ~~Gross sales in excess of one hundred thousand dollars (\$100,000).~~

(2) ~~Two hundred or more separate transactions.~~

(b) Payment of Tax. – A marketplace facilitator ~~that meets the threshold in subsection (a) of subject to~~ this section is considered the retailer of each marketplace-facilitated sale it makes and is liable for collecting and remitting the sales and use tax on all such sales. A marketplace facilitator is required to comply with the same requirements and procedures as all other retailers registered or who are required to be registered to collect and remit sales and use tax in this State. A marketplace facilitator is required to collect and remit sales tax as required by this section regardless of whether a marketplace seller for whom it makes a marketplace-facilitated sale meets any of the following conditions:

(1) Has a physical presence in this State.

(2) Is required to be registered to collect and remit sales and use tax in this State.

(3) Would have been required to collect and remit sales and use tax in this State had the sale not been made through a marketplace.

(4) Would not have been required to collect and remit sales and use tax in this State had the sale not been made through a marketplace.

...."

SECTION 2.3.(b) This section becomes effective July 1, 2020, and applies to sales occurring on or after that date.

SECTION 2.4. G.S. 105-164.4(a) reads as rewritten:

"(a) A privilege tax is imposed on a retailer engaged in business in the State at the percentage rates of the retailer's net taxable sales or gross receipts, listed in this subsection. The general rate of tax is four and three-quarters percent (4.75%). The percentage rates are as follows:

(1) The general rate of tax applies to the following items sold at retail:

- a. The sales price of each article of tangible personal property that is not subject to tax under another subdivision in this section. A sale of a freestanding appliance is a retail sale of tangible personal property.
- b. The sales price of certain digital property. The tax applies regardless of whether the purchaser of the property has a right to use it permanently or to use it without making continued payments. The sale at retail or the use, storage, or consumption in this State of a digital code is treated the same as the sale at retail or the use, storage, or consumption in this State of certain digital property for which the digital code relates."

SECTION 2.5.(a) G.S. 153A-154.1 reads as rewritten:

"§ 153A-154.1. Uniform ~~penalties provisions~~ for local meals taxes.

(a) Scope. – This section applies to every county authorized by the General Assembly to levy a meals tax. To the extent this section conflicts with any provision of a local act, this section supersedes that provision.

(b) Collection. – A retailer who is required to remit to the Department of Revenue the State and local sales and use tax is required to remit the local meals tax on prepared food and beverages to the taxing county on and after the effective date of the levy of the local meals tax.

~~(a)(c)~~ Penalties. – ~~Notwithstanding any other provision of law, the~~ The civil and criminal penalties that apply to State sales and use taxes under Chapter 105 of the General Statutes apply to local meals taxes. The governing board of a taxing county has the same authority to waive the penalties for a local meals tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(d) Definitions. – The following definitions apply in this section:

(1) Meals tax. – A tax on prepared food and beverages.

(2) Prepared food and beverages. – The term means both of the following:

- a. Prepared food, as defined in G.S. 105-164.3.
- b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3.

~~(b)~~ Scope. – ~~This section applies to every county authorized by the General Assembly to levy a meals tax. As used in this section, the term "meals tax" means a tax on prepared food and drink.~~

SECTION 2.5.(b) G.S. 160A-214.1 reads as rewritten:

"§ 160A-214.1. Uniform ~~penalties provisions~~ for local meals taxes.

(a) Scope. – This section applies to every city authorized by the General Assembly to levy a meals tax. To the extent this section conflicts with any provision of a local act, this section supersedes that provision.

(b) Collection. – A retailer who is required to remit to the Department of Revenue the State and local sales and use tax is required to remit the local meals tax on prepared food and beverages to the taxing city on and after the effective date of the levy of the local meals tax.

~~(a)(c)~~ Penalties. – ~~Notwithstanding any other provision of law, the~~ The civil and criminal penalties that apply to State sales and use taxes under Chapter 105 of the General Statutes apply to local meals taxes. The governing board of a taxing city has the same authority to waive the penalties for a meals tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

~~(b)~~ Scope. – ~~This section applies to every city authorized by the General Assembly to levy a meals tax.~~

(e)(d) Definitions. – The following definitions apply in this section:

(1) City. – A municipality.

(2) Meals tax. – A tax on prepared food and ~~drink~~ beverages.

(3) Prepared food and beverages. – The term means both of the following:

a. Prepared food, as defined in G.S. 105-164.3.

b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3."

SECTION 2.5.(c) This section becomes effective July 1, 2020, and applies to sales occurring on or after that date.

PART III. PERSONAL INCOME TAX CHANGES

...

SECTION 3.3. G.S. 105-154(d) reads as rewritten:

"(d) Payment of Tax on Behalf of Nonresident Owner or Partner. – If a business conducted in this State is owned by a nonresident individual or by a partnership having one or more nonresident members, the manager of the business shall report information concerning the earnings of the business in this State, the distributive share of the income of each nonresident owner or partner, and any other information required by the Secretary. The distributive share of the income of each nonresident partner includes any guaranteed payments made to the partner. The manager of the business shall pay with the return the tax on each nonresident owner or partner's share of the income computed at the rate levied on individuals under G.S. 105-153.7. The business may deduct the payment for each nonresident owner or partner from the owner or partner's distributive share of the income of the business in this State. If the nonresident partner is not an individual and the partner has executed an affirmation that the partner will pay the tax with its corporate, partnership, trust, or estate income tax return, the manager of the business is not required to pay the tax on the partner's share. In this case, the manager shall include a copy of the affirmation with the report required by this subsection. The affirmation must be annually filed by the nonresident partner and submitted by the manager by the due date of the report required in this subsection. Otherwise, the manager of the business is required to pay the tax on the nonresident partner's share. Notwithstanding the provisions of G.S. 105-241.7(b), the manager of the business may not request a refund of an overpayment made on behalf of a nonresident owner or partner if the manager of the business has previously filed the return and paid the tax due. The nonresident owner or partner may, on its own income tax return, request a refund of an overpayment made on its behalf by the manager of the business within the provisions of G.S. 105-241.6."

...

PART IV. CORPORATE TAX CHANGES

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SECTION 4.2.(a) G.S. 105-130.4(l) reads as rewritten:

"(l) Wholesale Content Distributors. – A wholesale content distributor's market for receipts is in this State as provided in G.S. 105-130.4A. In no event may the amount of ~~income apportioned~~ receipts sourced to this State be less than the amount determined under this subsection. The amount determined under this subsection is the total domestic gross receipts of the wholesale content distributor from advertising and licensing activities multiplied by two percent (2%). For purposes of this section, the term "wholesale content distributor" has the same meaning as defined in G.S. 105-130.4A."

SECTION 4.2.(b) G.S. 105-122(c1)(1) reads as rewritten:

"(1) Statutory. – A corporation that is subject to income tax under Article 4 of this Chapter must apportion its net worth by using the fraction it applies in apportioning its income under that Article. A corporation that is not subject to income tax under Article 4 of this Chapter must apportion its net worth by

using the fraction it would be required to apply in apportioning its income if it were subject to that Article. ~~The apportionment fraction for a wholesale content distributor, as that term is defined in G.S. 105-130.4A, shall not be less than two percent (2%).~~ The apportionment method set out in this subdivision is considered the statutory method of apportionment and is presumed to be the best method of determining the amount of a corporation's net worth attributable to the corporation's business in this State."

SECTION 4.2.(c) This section is effective for taxable years beginning on or after January 1, 2020.

...

SECTION 4.4. G.S. 105-130.5A(k) reads as rewritten:

"(k) Proposed Assessment or Refund. – If the Secretary redetermines the State net income of the corporation in accordance with this section by adjusting the State net income of the corporation or requiring a combined return, the Secretary shall issue a proposed assessment or refund upon making such redetermination. When a refund is determined in whole or part by a proposed assessment to an affiliated group member under this section, the refund shall not be issued until the proposed assessment to the affiliated group member has become collectable under G.S. 105-241.22. The amount of refund shall reflect any changes made by the Department under this section. ~~The~~ Otherwise, the procedures for a proposed assessment or a refund in Article 9 of Chapter 105 shall be applicable to proposed assessments and refunds made under this section."

SECTION 4.5. G.S. 105-130.11(b)(4) is repealed.

PART V. TAX ENFORCEMENT AND ADMINISTRATION CHANGES

SECTION 5.1. G.S. 105-236.1(a) reads as rewritten:

"(a) General. – The Secretary may appoint employees of the Unauthorized Substances Tax Section of the Tax Enforcement Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the excise tax on unauthorized substances imposed by Article 2D of this Chapter.

The Secretary may appoint up to 11 employees of the Motor Fuels Investigations Section of the Tax Enforcement Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the taxes on motor fuels imposed by Articles 36B, 36C, and 36D of this Chapter and by Chapter 119 of the General Statutes.

The Secretary may appoint employees of the Criminal Investigations Section of the Tax Enforcement Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the following tax violations and criminal offenses:

...

(3) The following criminal offenses when they involve a tax imposed under Chapter 105 of the General Statutes:

- a. G.S. 14-91 (Embezzlement of State Property).
- b. G.S. 14-92 (Embezzlement of Funds).
- c. G.S. 14-100 (Obtaining Property By False Pretenses).
- c1. G.S. 14-113.20 (Identity Theft).
- c2. G.S. 14-113.20A (Trafficking in Stolen Identities).
- d. G.S. 14-119 (Forgery).
- e. G.S. 14-120 (Uttering Forged Paper).
- f. G.S. 14-401.18 (Sale of Certain Packages of Cigarettes).
- g. G.S. 14-118.7 (Possession, transfer, or use of automated sales suppression device).
- h. G.S. 105-259 (Secrecy of tax information).

...."

SECTION 5.2. G.S. 105-241.8(b)(2) reads as rewritten:

"(2) Failure to file or filing false return. – There is no statute of limitations and the Secretary may propose an assessment of tax due from a taxpayer at any time if any of the following applies:

- a. The taxpayer did not file a return.
- b. The taxpayer filed a fraudulent return.
- c. The taxpayer attempted in any manner to fraudulently evade or defeat the tax.
- d. The taxpayer, as a trustee, collected taxes on behalf of the State, but did not remit all the taxes held in trust when due."

SECTION 5.3. G.S. 105-242.2 is amended by adding a new subsection to read:

"(f) Scope. – This section shall not apply to, or limit, the criminal liability of any person."

SECTION 5.4.(a) G.S. 105-243.1 reads as rewritten:

"§ 105-243.1. Collection of tax debts.

(a) Definitions. – The following definitions apply in this section:

- (1) Overdue tax debt. – Any part of a tax debt that remains unpaid ~~90~~60 days or more after it becomes collectible under G.S. 105-241.22. The term does not include a tax debt for which the taxpayer entered into an installment agreement for the tax debt under G.S. 105-237 within ~~90~~60 days after the tax debt became collectible, if the taxpayer has not failed to make any payments due under the installment agreement.

...

(d) Fee. – A collection assistance fee is imposed on an overdue tax ~~debt that remains unpaid 60 days or more after the tax debt is deemed collectible under G.S. 105-241.22.~~ debt. In order to impose a collection assistance fee on a tax debt, the Department must notify the taxpayer that the fee will be imposed ~~if the tax debt is not paid in full within 60 days after the date the notice of collection was mailed to the taxpayer.~~ in accordance with this section at least 60 days prior to its imposition. The fee notice may be included on the notice of collection. The fee is collectible as part of the debt. The Secretary may waive the fee pursuant to G.S. 105-237 to the same extent as if it were a penalty.

The amount of the collection assistance fee is twenty percent (20%) of the amount of the overdue tax debt. If a taxpayer pays only part of an overdue tax debt, the payment is credited proportionally to fee revenue and tax revenue.

...."

SECTION 5.4.(b) Section 5.1(b) of S.L. 2019-169 reads as rewritten:

"SECTION 5.1.(b) This section becomes effective ~~January 1, 2020,~~ August 1, 2020, and applies to tax debts that become collectible on or after that date."

SECTION 5.4.(c) Subsection (a) of this section becomes effective August 1, 2020, and applies to tax debts that become collectible on or after that date. The remainder of this section is effective when it becomes law.

SECTION 5.5. G.S. 93B-1 reads as rewritten:

"§ 93B-1. Definitions.

As used in this Chapter, the following definitions apply:

...

- (3) State agency licensing board. – Any State agency staffed by full-time State employees, which as part of their regular functions issue licenses. This section does not apply to the North Carolina Criminal Justice Education and Training Standards ~~Commission and Commission,~~ the North Carolina Sheriffs' Education and Training Standards ~~Commission-Commission,~~ and the North Carolina Department of Revenue. The following is a nonexclusive list of State agency licensing boards and the profession or occupation for which the board, agency, or officer may issue licenses:

...."

PART VI. EFFECTIVE DATE

SECTION 6. Except as otherwise provided, this act is effective when it becomes law.